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ORIGINAL
FILED

DEC 29 2006

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
DEPUTY CLERK

10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA
12

13 CALIFORNIA DEPARTMENT OF TOXIC
14 SUBSTANCES CONTROL,

15 Plaintiff,

16 v.

17 ESTATE OF LEONARD STEARNS, et al.

18 Defendants,
19

1:02-cv-05703 TAG
Case No.: CIV F 02-5703 TAG
STIPULATION FOR
SATISFACTION OF JUDGMENT
AND ~~PROPOSED~~ ORDER
(Doc. 121)

20 Plaintiff, the Department of Toxic Substances Control ("Department") and Defendant
21 Maurice Gubler hereby enter into this Stipulation for Satisfaction of Judgment and [Proposed]
22 Order (hereinafter "Stipulation and [Proposed] Order") as follows:

- 23 1. On June 13, 2002 the Department filed a Complaint pursuant to the provisions of
24 the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42
25 U.S.C. sections 9601 *et seq.*, against a number of defendants, including Gubler. On July 16,
26 2002 the Department filed a First Amended Complaint (hereinafter jointly "Complaint").
27 2. The Complaint involves the alleged release or threatened release of hazardous
28 substances in, at, around, and from property located at 12433 United Street, Kern County,

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STIPULATION AND [PROPOSED] ORDER RE GUBLER

1 California, approximately four miles south of the community of Mojave. ("UMR Site" or "Site")
2 The Complaint seeks, among other things, recovery of "response" costs (as that term is used in
3 CERCLA and defined in 42 U.S.C. section 9601(25)) incurred by the Department in monitoring,
4 assessing, and evaluating the alleged release and threatened release of hazardous substances in,
5 at, from, and around the UMR Site and in removing, remediating and overseeing the removal and
6 remediation of hazardous substances, in, at, from, and around the UMR Site.

7 3. On October 4, 2004, this Court entered Judgment against Gubler in the amount of
8 \$940,851.36. A copy of the Judgment is attached hereto as Exhibit A.

9 4. The Department and Gubler agree that the United States District Court for the
10 Eastern District of California, Magistrate Judge Teresa A. Goldner, presiding, has subject matter
11 jurisdiction over the matters alleged in this action and personal jurisdiction over the parties to
12 this Consent Decree.

13 5. The Stipulation and [Proposed] Order was negotiated and executed by the
14 Department and Gubler in good faith to avoid prolonged and complicated litigation and to further
15 the public interest.

16 6. The Stipulation and [Proposed] Order represents a fair, reasonable and equitable
17 settlement of the matters addressed herein as to all parties which have an interest in this
18 litigation.

19 7. Thirty (30) from the date on which the Court approves and enters the Stipulation
20 and [Proposed] Order, Gubler shall pay \$34,000 to the Department. Gubler shall pay the amount
21 set forth above by cashiers check payable to the California Department of Toxic Substances
22 Control and identified with the docket number of this case and "Site No. 100177." Payment shall
23 be mailed to:

24 Department of Toxic Substances Control
25 Accounting/Cashier
26 P.O. Box 806
Sacramento, CA 95812-0806

27 A copy of the check shall be mailed to:

28 Susan S. Fiering
Office of the Attorney General
1515 Clay Street, 20th Floor

P.O. Box 70550
Oakland, CA 94612

8. Within thirty (30) days of receipt of the amount set forth above, the Department will file a satisfaction of the Judgment as to Gubler.

9. The filing of the Satisfaction of Judgment shall not discharge any other potentially responsible parties from the terms of any judgments entered against them or from any liability to the Department in this matter, except that the amount of any payment actually made by Gubler in this matter shall reduce the liability of the other parties by that amount.

10. In entering into this Stipulation and [Proposed] Order the Department has specifically relied on financial information provided by Gubler demonstrating that he does not have the ability to pay the entire judgment against him. Gubler warrants and represents that the financial information he has presented to the Department is truthful and that his financial status has not change materially since the time he provided the financial information. This Stipulation and [Proposed] Order is conditioned upon the veracity and completeness of the financial information provided by Gubler, as set forth above.

11. Gubler hereby covenants not to sue and not to assert any claims or causes of action against DTSC, its authorized officers, employees, or representatives with respect to the Site, including but not limited to: (i) any direct or indirect claim for reimbursement from DTSC, or any State fund, under any provision of law; (ii) any claim against the State of California under sections 107 or 113 of CERCLA or section 7003 of RCRA; (iii) any other claims against DTSC or the State of California arising out of response activities at the Site, including but not limited to nuisance, trespass, takings, equitable indemnity and indemnity under California law, or strict liability under California law.

12. Except as expressly provided herein, nothing in the Stipulation and [Proposed] Order is intended nor shall it be construed to preclude the Department from exercising its authority under any law, statute or regulation. Furthermore, nothing in the Stipulation and [Proposed] Order is intended, nor shall it be construed, to preclude any other state agency, department, board or entity or any federal entity from exercising its authority under any law, statute or regulation.

1 13. Nothing in this Stipulation and [Proposed] Order shall be construed to create any
2 rights in, or grant any cause of action to, any person not a party to this Consent Decree. Each of
3 the parties to this Stipulation and [Proposed] Order expressly reserves all rights (including, but
4 not limited to, any right to contribution, indemnification and/or reimbursement), defenses,
5 claims, remedies, demands, and causes of action which each party may have with respect to any
6 matter, transaction, or occurrence relating in any way to the UMR Site against any person not a
7 party hereto.

8 14. By this Stipulation and [Proposed] Order Gubler has resolved his liability to the
9 Department for the Judgment in a judicially approved settlement and is entitled to protection
10 from actions and claims to the extent provided by CERCLA section 113(f)(2), 42 U.S.C. section
11 9613(f)(2).

12 15. The protection provided above is conditioned upon receipt by the Department of
13 the payment required by this Stipulation and [Proposed] Order.

14 16. The Department and Gubler stipulate that, in the event that Gubler does not
15 perform his obligations under the Stipulation and [Proposed] Order as set forth above, the
16 Department may take whatever steps are legally authorized to enforce the Judgment.

17 17. Each signatory to this Stipulation and [Proposed] Order certifies that he or she is
18 fully authorized by the party he or she represents to enter into this agreement, to execute it on
19 behalf of the party represented and legally to bind that party.

20 18. This Stipulation and [Proposed] Order constitutes the entire agreement between
21 the parties and may not be amended or supplemented except as provided for in the Consent
22 Decree.

23 19. The Court shall retain jurisdiction of this matter until the requirements of this
24 Stipulation and [Proposed] Order have been fully satisfied.

25 20. This Stipulation and [Proposed] Order may be executed in two or more
26 counterparts, each of which shall be deemed an original, but all of which together shall constitute
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1 one and the same instrument.

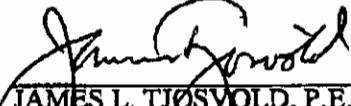
2 IT IS SO STIPULATED:

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4 Dated:

5 10/20/06

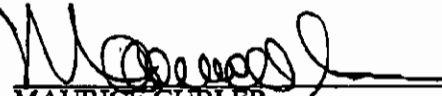
CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

6
7 By:


JAMES L. TJOSVOLD, P.E.
Chief, Northern California-Central Cleanup
Operations Branch
Site Mitigation and Brownfields Reuse Program
Department of Toxic Substances Control

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10
11 Dated:

10/08/06


MAURICE GUBLER

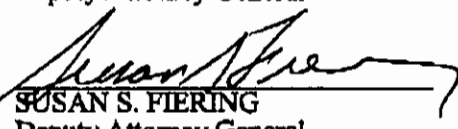
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13 APPROVED AS TO FORM:

14 Dated:

10/25/06

BILL LOCKYER, Attorney General
of the State of California
THEODORA BERGER
Senior Assistant Attorney General
SUSAN S. FIERING
Deputy Attorney General

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16
17
18 By:


SUSAN S. FIERING
Deputy Attorney General
Attorneys for the
STATE OF CALIFORNIA DEPARTMENT OF
TOXIC SUBSTANCES CONTROL

19
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21
22 Dated: October 8, 2006

RPM LAW GROUP, PC

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24
25 By:


DEVERA L. PETAK, Esq.
Attorneys for Maurice Gubler

1 one and the same instrument.

2 IT IS SO STIPULATED:

3
4 Dated:

CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

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7 By: JAMES L. TJOSVOLD, P.E.
Chief, Northern California-Central Cleanup
Operations Branch
8 Site Mitigation and Brownfields Reuse Program
Department of Toxic Substances Control
9

10
11 Dated: 10/08/06


12 MAURICE GUBLER

13 APPROVED AS TO FORM:

14 Dated:

BILL LOCKYER, Attorney General
of the State of California
15 THEODORA BERGER
Senior Assistant Attorney General
16 SUSAN S. FIERING
Deputy Attorney General
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19 By: SUSAN S. FIERING
Deputy Attorney General
Attorneys for the
20 STATE OF CALIFORNIA DEPARTMENT OF
TOXIC SUBSTANCES CONTROL
21

22 Dated: October 8, 2006

RPM LAW GROUP, PC

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24 By: 
25 DEVERA L. PETAK, Esq.
Attorneys for Maurice Gubler
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5-A

STIPULATION AND [PROPOSED] ORDER RE GUBLER

1 IT IS SO ORDERED: ✓

2 Dated December 28, 2006

The foregoing order, submitted as a ^{fax} stipulated "proposed" order, is hereby approved and adopted by the Court, in its entirety, and is hereby made the order of the Court.

Teresa A. Goldner
TERESA A. GOLDNER
Magistrate Judge, United States District Court